

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TERRY S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-1667 RSM

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS**

This matter is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint for lack of subject-matter jurisdiction. Dkt. 18. Defendant contends that because Plaintiff has not established that a live controversy exists in this case, the Court should dismiss the case pursuant to Federal Civil Rule of Procedure 12(b)(1). *Id.* at 1. After considering the record, the Court grants Defendant's Motion and dismisses this case with prejudice.

**BACKGROUND**

On January 4, 2023, Plaintiff, proceeding *pro se*, filed a Complaint indicating Defendant denied his claims for Disability Insurance Benefits ("DIB"), Supplemental Security Income ("SSI") benefits, Children's Disability Benefits, Widower Insurance Benefits, and other benefits under the Social Security Act ("the Act"). Dkt. 9 at 2. Attached to Plaintiff's Complaint were the following: a letter from the Internal Revenue Service regarding a report Plaintiff requested, a

1 copy of Plaintiff's driver's license, a business card from an employee at H&R Block, a letter  
2 from the King County Superior Court Clerk regarding an unrelated case, a letter from a law firm  
3 dated February 13, 2017 regarding an unrelated case, contact information for an attorney and  
4 medical and dental institutions, receipts for certified mailing from the U.S. Postal Service, and a  
5 complaint filed in King County Superior Court. Dkt. 9-1 at 1–9. Plaintiff also filed additional  
6 exhibits, including several documents from King County Superior Court, more certified mailing  
7 receipts, various contact information, and an *in forma pauperis* application. Dkts. 12, 17, 19, 20.

8 On March 7, 2023, Defendant filed the instant Motion. Dkt. 18. Defendant also  
9 submitted a declaration from Sierra Burgess, Social Security Specialist, and other exhibits  
10 regarding Plaintiff's benefits. Dkts. 18-1–18-5. According to the declaration, Plaintiff was a  
11 recipient of SSI benefits from October 1999 until December 2006 when he lost eligibility after  
12 his income exceeded the annual earnings limit under the Act. Dkt. 18-1 at 1–2. After the agency  
13 determined Plaintiff was overpaid in November and December 2006, Plaintiff remitted payment  
14 in 2008. Dkts. 18-1 at 2; 18-2–18-4. The declaration also states Plaintiff is a current recipient of  
15 DIB and has been receiving monthly DIB payments since April 2005. Dkt. 18-5. The record  
16 does not show that Plaintiff has any pending applications or appeals before the agency.

### 17 DISCUSSION

18 Defendant contends the Court must dismiss this case for lack of subject-matter  
19 jurisdiction. Dkt. 8 at 6. Federal courts have limited jurisdiction and “possess only that power  
20 authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511  
21 U.S. 375, 377 (1994) (citations omitted). When presented with a motion to dismiss  
22 for lack of subject matter jurisdiction, a plaintiff has the burden to demonstrate that this Court  
23 has jurisdiction. *See id.*; *see also* Fed. R. Civ. P. 12(b)(1). When presented with a motion to

1 dismiss pursuant to Rule 12(b)(1), the Court favorably views “the facts alleged to support  
2 jurisdiction.” *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000) (citing *Boettcher v. Sec.*  
3 *Health & Human Servs.*, 759 F.2d 719, 720 (9th Cir. 1985)). This Court has statutory  
4 jurisdiction to review “any final decision of the Commissioner of Social Security made after a  
5 hearing.” 42 U.S.C. § 405(g). A plaintiff seeking a judicial review of the denial of their benefits  
6 under the Social Security Act must first exhaust the remedies set forth in the Act. *See* 42 U.S.C.  
7 § 405(g); *Subia v. Comm. of Soc. Sec.*, 264 F.3d 899 (9th Cir. 2001); *Bass v. Soc. Sec.*  
8 *Admin.*, 872 F.2d 832, 833 (9th Cir. 1989). Section 405(g) of the Act specifically states, “that a  
9 civil action may be brought only after (1) the claimant has been party to a hearing held by the  
10 [Commissioner], and (2) the [Commissioner] has made a final decision on the claim.” *Bass*, 872  
11 F.2d at 833. A claimant obtains the Commissioner’s “final decision” about his or her entitlement  
12 to benefits only after completing the four steps of the administrative review process: (1) initial  
13 determination; (2) reconsideration determination; (3) hearing before an Administrative Law  
14 Judge (“ALJ”); and (4) Appeals Council review. *See* 20 C.F.R. §§ 404.900, 416.1400.

15 In this case, there is no indication Plaintiff has appealed the SSI benefits terminated in  
16 November and December 2006. There is also no indication Plaintiff was ever awarded, let alone  
17 denied, Children’s Disability Benefits and Widower’s Insurance Benefits. The record instead  
18 shows Plaintiff was approved for DIB benefits and received them as recently as January 2023.  
19 *See* Dkt. 18-5 at 1. As Plaintiff’s attachments and exhibits do not show that he has been denied  
20 Social Security benefits by Defendant, that he appealed the Commissioner’s denial, and that he  
21 has completed the necessary administrative process to acquire a “final decision by the  
22 Commissioner,” Plaintiff is unable invoke a judicial review pursuant to the Act. Accordingly,  
23 the Court must dismiss Plaintiff’s claim for lack of subject matter jurisdiction.

**CONCLUSION**

Based on the foregoing reasons, the Court hereby finds Plaintiff has not established subject matter jurisdiction. Accordingly, Defendant's Motion is GRANTED and this case is DISMISSED with prejudice.

The Clerk is directed to provide a copy of this Order to Plaintiff.

DATED this 5<sup>th</sup> day of April, 2023.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE